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SUBMISSION VIA FOIAONLINE.REGULATIONS.GOV

Regional Freedom of Information Officer
U.S. EPA, Region 6
1445 Ross Avenue (6MD-OE)
Dallas, Texas 75202-2733

Re: **Freedom of Information Act Request**

Dear Regional FOIA Officer:

Please accept this request, on behalf of my client, Luminant Generation Company LLC ("Luminant"), for information under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the U.S. Environmental Protection Agency's ("EPA") FOIA regulations at 40 C.F.R. Part 2. As described in greater detail below, I am seeking several categories of information from EPA (including but not limited to EPA's Region 6 offices located in Dallas, Texas) related to EPA's review of the regional haze State Implementation Plans ("SIPs") for Texas and Oklahoma and EPA's proposed action on those SIPs. See 79 Fed. Reg. 74,818 (Dec. 16, 2014) ("Proposed Rule").

Specifically, Luminant seeks the following records:

- (1) Any and all records reflecting communications or correspondence between EPA and any third-party contractor (including but not limited to ENVIRON, RTI International, or Dr. Phyllis Fox) related to any modeling, analysis, or other work performed for EPA as part of EPA's review of the regional haze SIPs of Texas or Oklahoma;
- (2) Copies of any instructions or data provided by EPA to any third-party contractors (including but not limited to ENVIRON, RTI International, or Dr. Phyllis Fox) for work performed for EPA as part of EPA's review of the regional haze SIPs of Texas or Oklahoma;
- (3) Any and all records or data generated by EPA, or received by EPA from any third-party contractor (including but not limited to ENVIRON, RTI International, or Dr. Phyllis Fox), related to EPA's review of the regional haze SIPs of Texas or Oklahoma that are not included on the docket for the Proposed Rule (EPA-R06-OAR-2014-0754);
- (4) Any and all records reflecting or relating to a cost per deciview analysis or calculation performed by EPA or any third-party contractor related to EPA's

review of the regional haze SIPs of Texas or Oklahoma, and any and all records reflecting EPA's decision not to provide such analysis or calculation in the docket for the Proposed Rule;

- (5) Any and all records related to EPA's consideration, evaluation, or rejection of thresholds for visibility impacts and benefits to be used for reasonable progress purposes, including in EPA's recent FIPs that have included or excluded controls for reasonable progress (see page A-75 of EPA's FIP TSD for the Proposed Rule);
- (6) Any and all records reflecting an analysis performed by EPA or any third-party contractors of the impact of the Proposed Rule on electric reliability;
- (7) Any and all records reflecting any communications or correspondence between EPA and any employee, member, attorney, or representative of any public interest organization, including but not limited to Sierra Club, National Parks Conservation Association, Earth Justice, or Environmental Integrity Project, regarding the regional haze SIPs for Texas and Oklahoma or the Proposed Rule; and
- (8) Any and all records relating to the EPA-FLM-RPO-States-Tribes Meeting on the Future of the Regional Haze Program held on March 3-4, 2015 at EPA's Campus at Research Triangle Park, North Carolina, including but not limited to materials prepared by EPA staff for the meeting, materials distributed or displayed at the meeting, any notes from the meeting, any comments, correspondence, or statements received from others related to the topics discussed at the meeting, and any emails related to the meeting.

We believe that the information requested above is publicly available and not exempt from mandatory disclosure under FOIA. However, to the extent that EPA believes one or more of the records described above qualify for withholding under a FOIA exemption, we respectfully request that EPA exercise discretionary disclosure in the public's interest, consistent with the policies set forth by the President and Attorney General of the United States.¹

Should EPA ultimately decide to withhold any responsive information, please describe for each record withheld (1) under which of the categories described above the record falls, and (2) the basis upon which EPA relies for its decision to withhold the record. As you are aware, it is ultimately the agency's burden to establish the applicability of any FOIA exemption.² Therefore, for any withholding,

¹ See Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (FOIA "should be administered with a clear presumption: [i]n the face of doubt, openness prevails"); Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Mar. 19, 2009) ("strongly encourag[ing] agencies to make discretionary disclosures of information").

² See 5 U.S.C. § 552(a)(4)(B) (providing that "the burden is on the agency to sustain its action" to withhold records under a FOIA exemption); see also, e.g., *Department of State v. Ray*, 502 U.S. 164, 173 (1991).

please provide a description sufficient to determine what information is being withheld and the specific reason(s) for the withholding.

Please provide any and all records responsive to this FOIA request in electronic format and, where practicable, in native format.

We are willing to pay the costs associated with EPA's response to this FOIA request up to \$2,500 without further authorization. Should the costs exceed this amount, please contact me to discuss further cost assurance as soon as possible so as not to delay EPA's response.

Thank you for your attention to this matter. Should you have any questions, please contact me at (205) 226-8735 or sgidiere@balch.com.

Best regards,

A handwritten signature in blue ink, appearing to read "P. Stephen Gidiere III", with a large, stylized flourish extending to the right.

P. Stephen Gidiere III